



# IN-LIEU-FEE (ILF) PROJECT DATA WORKSHEET

DEP Invoice # 37

*[Note: Will be filled in by ILF Administrator in Augusta]*

Project name: Westside Interceptor Sewer Replacement

Applicant (s): City of Portland

DEP/Corps permit #: DEP L-24743-TE-A-N/DEP L-24743-IW-B-N

*[Note: Please attach a PDF copy of the permit]*

DEP ATS #: 70736 & 70823

ILF Contribution Amount \$98,457

*[Note: Please attach a PDF copy of the check]*

Project address: Portland

*[Note: Please attach a PDF map of project location]*

Biophysical region: Coast of Maine Lowland Subsection

Size of total impact subject to compensation: 24,191 square feet of freshwater wetland

Resources Impacted: FW

*[The resource table on page 2 MUST be filled in with all resource types impacted, amounts and functions.]*

Project manager: Robert Green

Note: The ILF Project Data Worksheet must be filled out by the PM within 3 days of receiving a contribution to the "Natural Resource Mitigation Fund" and faxed along with a copy of the check to James Cassida in Augusta at 287-7826. The distribution of ILF contributions is time sensitive.

The PM should also double check to make sure that the check has been routed to Augusta with the correct account number reference. The account # for the ILF program is 014.06A.1776.14

## Resource(s) Impacted:

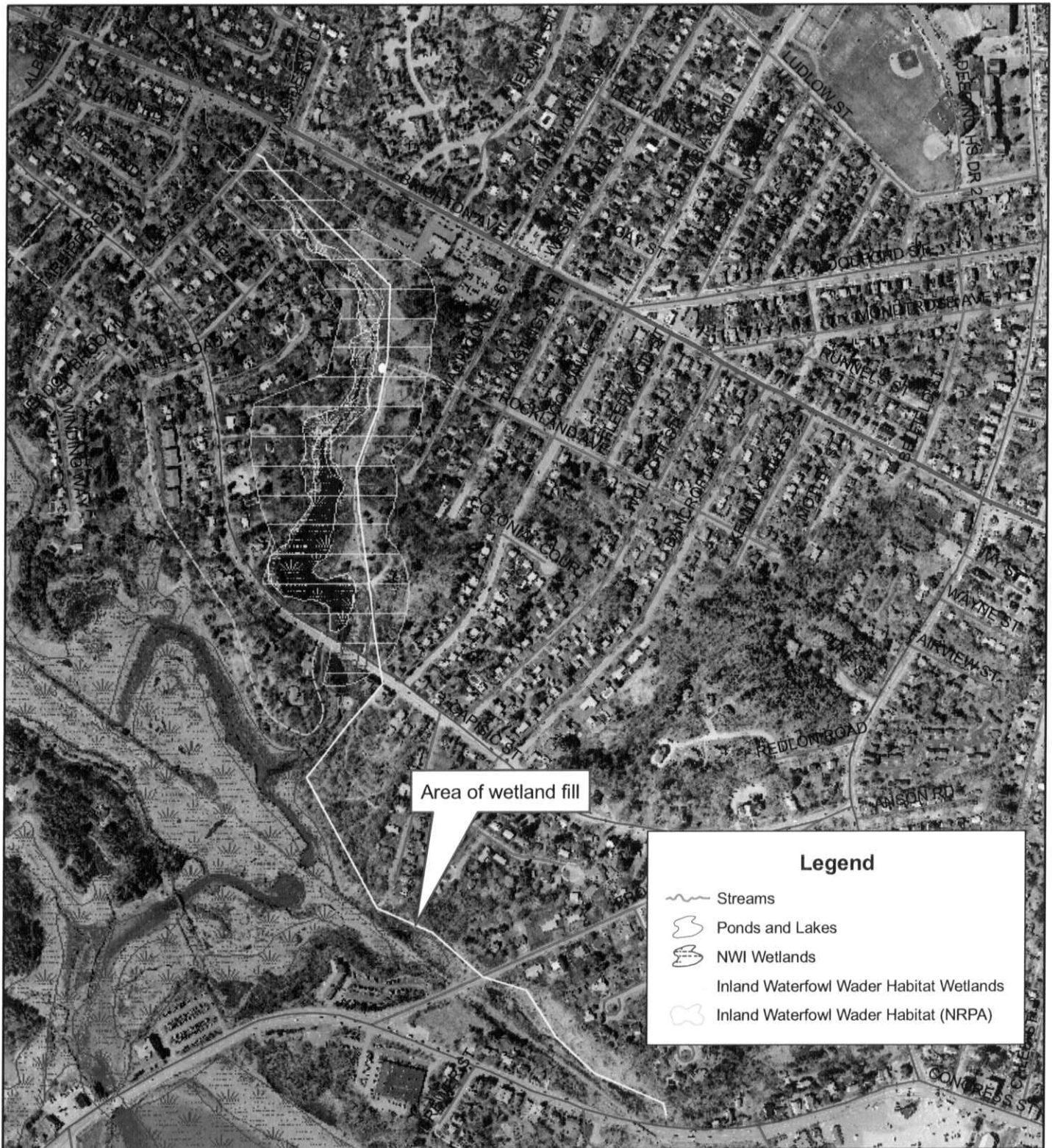
**Resource Type:** (Wetlands by NWI Type (PFO, PSS, M1, M2, E1, E2, etc), significant vernal pool (SVP), shorebird feeding & staging habitat (Shorebird), inland waterfowl & wading bird habitat (IWWH), tidal waterfowl & wading habitat (TWWH), and river, stream, or brook (RSB).

**Wetland Functions & Values:** Groundwater recharge/discharge (GWR); floodflow alterations (FF); fish & shellfish habitat (FSH); sediment toxicant retention (STR); nutrient removal (NR); production export (PE); sediment/shoreline stabilization (SS); wildlife habitat (WH); recreation (R); education/scientific value (ESV); uniqueness/heritage (UH); and visual quality/aesthetics (VQ).

**Types of impacts:** may include filling, dredging, vegetation conversion (e.g. forested to shrub/scrub), others.

<b>Resource type</b> (list all that apply)	<b>Functions (for wetland impacts)</b> (list all that apply, by resource type)	<b>Type of Impact</b> (by resource type)	<b>Sq Feet Impacted</b> (by resource type)
PEM	FF, STR, NR, SS, WH	Fill	16,870
PFO	WH	Fill	7,321
<b>Total square feet impacted</b>			24,191

# Westside Interceptor Sewer Replacement, Portland



Approximate location of sewerline is shown in yellow.



## Map Notes:

- Background hydrologic, topographic and political features are from MEGIS data layers with an accuracy of +/- 40 feet.
- All spatial data is projected to NAD 1983 UTM Zone 19.
- All spatial data is specific to Maine DEP Bureau of Land and Water Quality. Data is maintained by the Maine DEP GIS Unit.
- This map is to be used for reference purposes only and does not represent authoritative locations of displayed features.

Map Prepared By: Robert Green  
Maine DEP, BLWQ,  
Division of Land Resource Regulation  
March 11, 2010





STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

CITY OF PORTLAND	) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County	) FRESHWATER WETLAND ALTERATION
WESTSIDE INTERCEPTOR	) SIGNIFICANT WILDLIFE HABITAT ALTERATION
SEWER REPLACEMENT	) WATER QUALITY CERTIFICATION
L-24743-TE-A-N (approval)	)
L-24743-IW-B-N	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of CITY OF PORTLAND with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In January 1991, the City of Portland and the Portland Water District entered into an Administrative Consent Agreement with the Department. The consent agreement required the City of Portland and Portland Water District to begin a prioritized, long-term program to abate Combined Sewer Overflows (CSOs) in Portland. As a result of this agreement, a Master Plan, dated December 1993, was completed. The Master Plan outlines an aggressive 15-year implementation schedule to abate 39 CSOs contributing to six receiving water bodies. One primary goal of the Master Plan is to eliminate all CSOs in sensitive receiving waters including Capisic Brook.

In Department Order #L-24546-TB-B-N, dated April, 21, 2009, the Department approved the alteration of 5,500 square feet of freshwater wetlands to construct a 48-inch culvert to convey stormwater to Capisic Brook. This project separated stormwater from the upper Westside Interceptor combined sewer system between Forest Avenue and Mount Sinai Cemetery in the Capisic Brook watershed.

Combined sewer lines from several neighborhood lines and the Deering Center Branch storm drain are collected at a concrete chamber on Lucas Street, located at the head of Capisic Pond. These flows are directed into a 120-inch pipe that runs parallel to the Westside Interceptor in Capisic Pond Park before emptying into a diversion chamber at Capisic Pond Dam. The diversion chamber outlets into the Westside Interceptor, but during periods of high flow it overflows into Capisic Brook. This combined sewer overflow, identified by the City as CSO #36, is proposed to be eliminated, as detailed in the Master Plan. The Westside Interceptor also receives combined sewer flows downstream of CSO #36 from Deering Center Branch, Frost Street, Capisic Street, and the Fore River Interceptor.

Department staff reviewed a Geographic Information System (GIS) mapping database that contains information provided by both the Department of Marine Resources and the Maine Department of Inland Fisheries and Wildlife (MDIFW). The GIS database indicates that Capisic Pond Park and portions of the surrounding neighborhood lies within an Inland Waterfowl and Wading Bird Habitat (IWWH), which is a Significant Wildlife Habitat, as defined in the NRPA.

B. Summary: The project need and purpose is to eliminate CSO #36. To meet the project need and purpose, the applicant proposes to replace the Westside Interceptor from Lucas Street to Congress Street with a 60-inch concrete pipe. The existing interceptor consists of 2,900 linear feet of 30-inch diameter clay pipe and 2,700 linear feet of 24-inch clay pipe. The route of the new pipe will closely parallel the existing one and deviate when necessary to shorten its length or avoid wetland impacts.

Because the existing interceptor has very limited vehicle accessibility between Congress Street and Capisic Street, a gravel access road is required to provide access for cleaning and maintenance of the sewer line. The proposed 9-foot wide gravel road, with two-foot shoulders, will be located over the interceptor and constructed using a geogrid reinforcement system to minimize the gravel base depth. Due to travel restrictions on existing right-of-ways, the applicant proposes to limit ground disturbance activities to a 30-foot wide corridor.

The freshwater wetlands between Capisic Street and Congress Street are classified as wetlands of special significance (WOSS) because they are located within 250 feet of a coastal wetland. The applicant is seeking approval under the NRPA to alter approximately 19,687 square feet of freshwater wetlands and to temporarily disturb 86,000 square feet of IWWH at Capisic Pond Park to replace approximately 5,500 linear feet of sewer line as part of the combined sewer overflow abatement project in the Capisic Brook watershed. The proposed project will bring the cumulative wetland impacts resulting from the Westside Interceptor project to 24,191 square feet. The project is shown on a set of plans, the first of which is entitled "West Side Interceptor," prepared by Woodard & Curran, Inc., and dated October 15, 2009, with a last revision date of January 27, 2010. The project site is located between Lucas Street at the entrance to Capisic Pond Park and the west side of Congress Street near Westland Avenue in the City of Portland.

C. Current Use of the Site: The southern portion of the project site, between Capisic Street and Congress Street, is undeveloped woodland and freshwater wetlands. The northern portion of the project site is a heavily developed residential neighborhood and includes Capisic Pond Park.

## 2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph of the project site. Department staff visited the project site on July 2, 2009 and October 30, 2009.

The proposed project is located in Capisic Pond Park, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The proposed project will result in the loss of several trees and shrubs as



well as realignment of the walking trail through the park. To mitigate for these impacts, the applicant proposes to limit ground disturbance within the park to a 30-foot wide corridor running the length of the park. The applicant also submitted a park restoration plan, which is discussed in Finding 4. Following implementation of the restoration plan, there will be no permanent changes to the scenic and aesthetic values of the park.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating and the site visits, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

Construction within the park is estimated to take five weeks during the summer of 2010. Given that use of the park will be temporarily limited during construction, the Department did not identify any issues involving existing recreational issues.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

During construction, the applicant proposes to follow erosion control measures recommended in the Maine Erosion and Sediment Control Best Management Practices manual and submitted a detailed erosion control plan as Attachment 8 in the application.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The Department's GIS mapping database indicates that Capisic Pond Park is located within an IWWH, and MDIFW confirmed the presence and value of this significant wildlife habitat, referred to as IWWH200332. The MDIFW reviewed the proposed project and stated that there are no Essential Wildlife Habitats at the project site.

The Department's Significant Wildlife Habitat Rules, Chapter 335, require the applicant to meet the following standards:

A. Avoidance. An activity that would degrade the significant wildlife habitat, disturb the subject wildlife, or affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, will be considered to have an unreasonable impact if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project completed by David Senus of Woodard & Curran, Inc., and dated October 15, 2009. The alternatives analysis describes the options considered by the City of Portland: (1) to do nothing; (2) to add a second pipe adjacent to the existing interceptor to carry combined wastewater and stormwater flows; (3) to replace the existing interceptor with a larger diameter pipe. The project being

proposed in this application utilizes alternative #3, as the only constructable alternative that will eliminate CSO #36. The Division of Water Quality Management (DWQM) of the Bureau of Land and Water Quality (BLWQ) also reviewed the alternatives analysis and approved this project as part of Portland's CSO Master Plan.

B. Minimal Alteration. Alteration of the habitat and disturbance of subject wildlife must be kept to the minimum amount necessary by, among other methods, minimizing the size of the alteration, the duration of the activity, and its proximity to the significant wildlife habitat and subject wildlife. The applicant proposes to limit ground disturbance activities to a 30-foot wide corridor for the length of the project. In an effort to limit disturbance to the bird habitat in Capisic Pond Park, the applicant and its consultants met with interested members of the public and a MDIFW wildlife biologist to identify vegetation to be protected, transplanted, or replaced. The applicant submitted a Restoration Plan that identifies the plant strategy and a plan showing the locations of proposed plantings.

C. Compensation. Compensation is required to achieve the goal of no net loss of habitat functions and values. To mitigate for impacts to wildlife habitat resulting from the proposed development, the applicant submitted a Restoration Plan that is designed to retain high value plants when possible, to diversify the native plant communities, to naturalize the approach to revegetation, and to remove invasive plant species. The Restoration Plan includes the location and list of trees, shrubs, and grass and seed mixes that will provide cover and food sources for the numerous species of migrating birds that use this area. The Restoration Plan was reviewed by a wildlife biologist from MDIFW who commented that implementation of the plan would result in improvements that would benefit the habitat and wildlife that use the area by reducing in the amount of lawn in the park, relocating the trail further from the edge of the pond, and removing non-native invasive plant species. MDIFW further commented that impacts to the habitat are predominantly short-term impacts and that the result would be an improvement to water quality.

MDIFW recommended, and the applicant agreed, to limit disturbances during the breeding season, April 15 to July 31. Construction of the sewer pipe within the Capisic Pond Park is currently scheduled for August and September and will not be conducted during the breeding season. MDIFW further recommended that if construction is not completed by October 15, the applicant should contact MDIFW for additional consultation to avoid adverse impacts during the fall migration.

The applicant requested, and MDIFW agreed, to allow planting activities outside of the 30-foot construction corridor during the breeding season provided that low impact techniques are utilized in lieu of heavy equipment. MDIFW commented that this area is an important stopover for migratory songbirds and encouraged all spring plantings take place after May 20.

In accordance with the implementation schedule in the Restoration Plan, the applicant will initiate the plan no later than 30 days following the decision date of this Order and will complete the plan no later than June 1, 2011.

Post-construction monitoring of Capisic Pond Park will occur annually, with reports submitted to the BLWQ for a period of three years following completion of the Restoration Plan planting schedule and no later than December 31<sup>st</sup> of the year being monitored. The applicant must ensure that at least 85% of the plantings have survived. If the 85% criteria is not met, corrective action must be taken, which may include replanting.



The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries provided that the applicant initiates the Restoration Plan no later than 30 days following the decision date of this Order and completed by June 1, 2011, no construction work within Capisic Pond Park is conducted between April 15 and July 31 of any calendar year, and all post-construction monitoring reports are submitted to the BLWQ for the three-year period.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The project need and purpose is to eliminate CSO #36. At its completion, the project will ultimately improve water quality to Capisic Brook and the coastal wetlands downstream.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to replace approximately 5,500 linear feet of sewer line, which will alter approximately 19,678 square feet of freshwater wetlands. The proposed sewer line will cross wetlands at eighteen locations. The 19,678 square feet of wetland alteration includes 7,465 square feet of WOSS identified as such due to their proximity to coastal wetlands and 987 square feet of WOSS located within a significant wildlife habitat (Capisic Pond Park). The proposed project will bring the cumulative wetland impacts resulting from the CSO abatement projects in the Capisic Brook watershed to 25,178 square feet.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The alternatives analysis for the proposed project is discussed in Finding 4.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant's alternatives analysis determined that replacing the existing sewer line in the same location will result in the least amount of wetland fill. The applicant minimized wetland impacts to the greatest extent practicable by reducing the amount of grading and amount of cover over the pipe. Fitting the pipe with anti-flotation devices will allow for shallower cover depths and consequently, narrower sideslopes. The applicant also intends to steepen sideslopes in the wetlands to as much as 1.75:1 to further reduce wetland impacts.

C. Compensation. In accordance with Chapter 310, Section 5C, compensation is required to achieve the goal of no net loss of wetland functions and values. The applicant submitted a functional assessment, dated July 2009, which described the wetlands to be altered by the

proposed project and identified their primary functions and values as floodflow alteration, sediment/toxicant retention, nutrient removal, sediment/shoreline stabilization, and wildlife habitat.

Compensation for wetland impacts within Capisic Pond Park (987 square feet) is addressed in the Restoration Plan. After considering several compensation options, the applicant elected to make a contribution into the Maine Natural Resource Conservation Fund (MNRCF) in the amount of \$98,457 to compensate for the remaining 18,691 square feet of impacts to freshwater wetlands associated with the proposed project.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that the applicant initiates the Restoration Plan no later than 30 days following the decision date of this Order and completed by June 1, 2011, no construction work within Capisic Pond Park is conducted between April 15 and July 31 of any calendar year, and all post-construction monitoring reports are submitted to the BLWQ for three years following completion of the Restoration Plan planting schedule as described in Finding 4.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.

- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of CITY OF PORTLAND to alter 19,687 square feet of freshwater wetlands and to temporarily disturb 86,000 square feet of IWWH at Capisic Pond Park to replace approximately 5,500 linear feet of sewer line as part of the combined sewer overflow abatement project in the Capisic Brook watershed, as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. No construction work within Capisic Pond Park shall be conducted between April 15 and July 31 of any calendar year.
5. The applicant shall initiate the Restoration Plan no later than 30 days following the decision date of this Order and completed by May 2011.
6. Monitoring reports for the restoration of Capisic Pond Park shall be submitted to the BLWQ as described in Finding 4 for three years following completion of the Restoration Plan planting schedule. The reports shall be submitted to the Department by December 31<sup>st</sup> of the year being monitored. Monitoring reports shall also include photographs and recommendations for remedial actions if necessary.

The applicant shall ensure that at least 85% survival rate of the plantings used to improve Capisic Pond Park. If the 85% criteria is not met, corrective action shall be taken, which may include replanting.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

A handwritten signature in dark ink, appearing to read 'C Fisk', is positioned to the left of the digital signature text.

This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date. 2010.03.22 10:55:11 -04'00'

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

rlg/ats#70736 & 70823/l24743an & l24743bn



## Natural Resource Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Revised (4/92/DEP LW0428



## DEP INFORMATION SHEET

# Appealing a Commissioner's Licensing Decision

**Dated: May 2004**

**Contact: (207) 287-2811**

### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

DEP's General Laws, 38 M.R.S.A. § 341-D (4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status*. Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error*. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge*. If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought*. This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.



5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B) (5)

### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

## **II APPEALS TO MAINE SUPERIOR COURT**

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

**ADDITIONAL INFORMATION:** If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

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DO NOT ACCEPT THIS CHECK UNLESS YOU CAN SEE A DUAL-TONE TRUE WATERMARK THAT APPEARS AS CONNECTING HEXAGONS WHEN HELD TO THE LIGHT AND "SAFE" APPEARS WHEN VIEWED AT AN ANGLE.



**CITY OF PORTLAND**  
PORTLAND, MAINE

315857

STATE OF MAINE-DEP

TO THE ORDER OF:

DATE

03-19-2010

VOID IF NOT PRESENTED  
NINETY DAYS FROM DATE

PAY EXACTLY  
\$\*\*\*\*\*98,457.00

014 064 176 14

*Alan S. [Signature]*

AUTHORIZED SIGNATURE  
REGULAR ACCOUNT

TD BANKNORTH  
PORTLAND, MAINE

315857 12212744501 0291 52892

*[Signature]*  
RECEIVED  
OVER FIVE THOUSAND DOLLARS

THE FACE OF THIS CHECK HAS A BLUE BACKGROUND - ANY OTHER COLORS MAY BE EVIDENCE OF CHEMICAL ALTERATION OR ERASURE - SEE REVERSE SIDE FOR MORE SAFETY FEATURES